

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN TOTIN,

Plaintiff,

ANSWER

vs

DIGIULIO GROUP REAL ESTATE LLC,
AND JUSTIN DIGIULIO,

Civil Action No. 21-cv-2916

Defendants.

Defendants, for their Answer to the Complaint, state as follows:

1. With respect to Complaint ¶ 1, deny the unauthorized, willful and continuing use of 116 photographs authored and owned by Plaintiff, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.
2. Deny the allegations in ¶ 2.
3. Deny the allegations in ¶ 3.
4. With respect to ¶ 4, admit Defendant Justin DiGuilio is a licensed real estate broker and DiGuilio Group Real Estate LLC is his limited liability company, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.
5. Upon information and belief, ¶ 5 does not require a response because it calls for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.
6. With respect to ¶ 6, admit Defendants are domiciled in and licensed to do business in the State of New York, deny infringing upon Plaintiff's copyrights and any

wrongdoing whatsoever, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.

7. With respect to ¶ 7, deny infringing upon Plaintiff's copyrights and any wrongdoing whatsoever, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.

8. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 8.

9. Admit the allegations in ¶ 9.

10. Admit the allegations in ¶ 10.

11. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 11.

12. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 12.

13. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 13.

14. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 14.

15. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 15.

16. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 16.

17. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 17.

18. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 18.

19. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 19.

20. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 20.

21. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 21.

22. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 22.

23. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 23.

24. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 24.

25. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 25.

26. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 26.

27. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 27.

28. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 28.

29. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 29.

30. Upon information and belief, ¶ 30 does not require a response because it calls for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

31. Upon information and belief, ¶ 31 does not require a response, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

32. Upon information and belief, ¶ 32 does not require a response because it calls for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

33. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 33.

34. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 34.

35. With respect to ¶ 35, admits publishing the 22 West 77 photographs to the website, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.

36. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 36.

37. With respect to ¶ 37, admits receiving a notice from Plaintiff but denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.

38. With respect to ¶ 38, admits removing the 22 West 77 photographs and denies the remaining allegations in that paragraph.

39. With respect to ¶ 39, admits Marc Illes published the 860 Riverside photographs to the website, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.

40. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 40.

41. With respect to ¶ 41, admits removing the 860 Riverside photographs and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.

42. With respect to ¶ 42, denies publishing the 338 West 77 photographs, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in that paragraph.

43. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 43.

44. Admit the allegations in ¶ 44.

45. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 45.

46. Upon information and belief, ¶ 46 does not require a response because it calls for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge

or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

47. Upon information and belief, ¶ 47 does not require a response because it calls for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

48. Deny the allegations in ¶ 48.

49. Upon information and belief, ¶ 49 does not require a response because it calls for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

50. With respect to ¶ 50, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence, and denies the remaining allegations in that paragraph.

51. Upon information and belief, the allegations in the first sentence of ¶ 51 does not require a response because it call for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that sentence. Defendants denies the remaining allegations in ¶ 51.

52. Upon information and belief, the allegations in the first sentence of ¶ 52 does not require a response because it call for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that sentence. Defendants denies the remaining allegations in ¶ 52.

53. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 53, first sentence, and deny the remaining allegations in that paragraph.

54. Deny the allegations in ¶ 54.

55. Upon information and belief, ¶ 55 does not require a response, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

56. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 56.

57. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in ¶ 57.

58. Deny the allegations in ¶ 58.

59. Upon information and belief, ¶ 59 does not require a response, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

60. Upon information and belief, ¶ 60 does not require a response because it calls for a legal conclusion, but in the event a response is deemed required, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in that paragraph.

61. With respect to ¶ 61, admits Defendants had the ability and responsibility to supervise its sales associates and interns, and denies the remaining allegations in that paragraph.

62. Deny the allegations in ¶ 62.

63. Deny the allegations in ¶ 63.

FIRST AFFIRMATIVE DEFENSE

64. Defendants obtained the photographs through software used in its regular course of business.

65. Defendants did not have notice of Plaintiff's copyright to the photographs.

66. Defendants had a good faith belief that use of the photographs did not constitute an infringement of copyright.

67. If there was any infringement of copyright, it was innocent infringement.

WHEREFORE, Defendants respectfully requests that this Court dismiss the Complaint and enter judgment in favor of Defendants, and for such other and further relief as the Court deems just and proper.

Dated: June 23, 2021

/s/ David K. Hou

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